



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/648,132

08/26/2003

Joerg Schiewe

1/1394

3249

28501

7590

02/19/2008

MICHAEL P. MORRIS

BOEHRINGER INGELHEIM CORPORATION

900 RIDGEBURY ROAD

P. O. BOX 368

RIDGEFIELD, CT 06877-0368

EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

02/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,132

Applicant(s)

SCHIEWE ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 31, 32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the request for continued examination filed on November 30, 2007. Examiner acknowledges claims 1-14, 31, 32, and 34 are pending in this application, with claim 1 having been currently amended, and claims 15-30, 33, and 35 having been cancelled.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2007 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14, 31, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casper et al. (6,644,309) in view of Casper et al. (6,550,477).

As to Claims 1-4, 32, and 34, Casper('309) discloses a device for the delivery of a drug in an aerosol of droplets by delivery of the drug under pressure, comprising: a container cartridge (72) having a non-pressurized cylinder, at rest, containing a single dose of the drug, a piston (30) communicating with one end of the cylinder (via valve stem 58), and an outlet end (76) opposite the inlet end having a dispensing facility and means for feeding the drug thereto; an elastic element (34) for the storage of a predetermined quantity of energy; a mobile element (the movement of the piston 30 within the housing 36) to which the predetermined quantity of energy can be fed and which is coupled to the piston such that the energy can move the piston and expose the single dose of the drug to a predetermined increase in pressure within the cylinder. (Figure 1, Column 6, Lines 30-33). Yet, Casper('309) does not disclose a means for the respective introduction and removal of the container cartridge into and from an accommodation chamber within the device. However, at the time the invention was made the means for respective introduction and removal of the container cartridge was known. Specifically, Casper('477) teaches the use of a hinged inhaler to enable provide a means for the inhaler to be covered with a cap mechanism and to enable the inhaler cartridge to be replaced for multiple uses. (Column 5, Lines 24-31). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Casper('309) to include a hinged means for introduction and removal of the cartridge, as taught by Casper('477) to enable the inhaler device to be reused.

As to Claim 5, Casper('309) discloses a removable grip (44).

As to Claims 6-9, Casper('309) discloses the upper housing (64) the middle housing (60) and the lower housing (36) yet does not disclose the portions to be rotably removed from each other. However, Casper('477) teaches a lower housing section (424), which defines the bottom side of the device and a upper housing section (442) wherein the container cartridge can be introduced into a bore passing through the upper housing (1) for enabling the device to be constructed and deconstructed for reuse.

As to Claims 10-14, Casper('309) discloses a locking mechanism between the upper housing (64) the middle housing (60) and the lower housing (36) wherein the locking mechanism between the upper and middle are elements 62 and 66 and the locking mechanism between the middle and lower housing are the combination of elements 38 and 32.

Response to Arguments

5. Applicant's arguments with respect to claims 1-14, 31, 32 and 34 have been considered but are moot in view of the new ground(s) of rejection.
6. Regarding prior art Casper ('309), Applicant asserts Casper does not disclose an elastic element and mobile element meeting the recited limitations. Examiner respectfully disagrees. Regarding the elastic element, Casper discloses element 34, a spring. As known in the art all springs have a predetermined quantity of energy that is stored within the spring. Variations in the amount of energy stored within the spring is a function of the spring constant, the distance the spring is traveled, and the physical characteristics (such as thickness) of the spring. Regarding the mobile element, Casper

Art Unit: 3771

discloses element 30, a piston/plunger, which absorbs the energy from the spring, element 34, and transfers the absorbed energy to the container via element 58 until which time that the energy forces the container (72) to burst (Column 9, Lines 10-40). Thus in light of the aforementioned reasoning the teachings of Casper ('309) in view of newly cited art Casper ('477) disclose the features of the Applicant's invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3771

Annette F Dixon
Examiner
Art Unit 3771

/Annette F Dixon/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771